

the action under Fed. R. Civ. P. 12(b)(1) because Plaintiff lacks standing under Article III of the U.S. Constitution to prosecute its claims. *See* ECF No. 46-1 at pp. 4-11.¹ Defendants will be prejudiced by the approval of a class action settlement prior to the Court's adjudication of subject matter jurisdiction, because if Plaintiff lacks Article III standing, this case should be terminated rather than prolonged.

Article III standing must be ascertained by a district court prior to considering a motion for preliminary approval of a classwide settlement. *See Murkansky v. Godiva Chocolatier, Inc.*, 979 F. 3d 917 (11th Cir. 2020). The Supreme Court has confirmed that a “court is powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing.” *Frank v. Gaos*, 139 S. Ct. 1041, 1046, 203 L.Ed.2d 404 (2019). *See also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (“Without jurisdiction the court cannot proceed at all in any cause.”) (citation omitted); *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 479–80 (4th Cir. 2005).

Furthermore, Plaintiff and Kimberly-Clark can neither waive nor stipulate to the existence of subject matter jurisdiction. *See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

Therefore, the Court must first decide Defendants' Joint Motion to Dismiss prior to considering the Settlement Motion. *See* ECF No. 46

¹ Although defendant Kimberly-Clark did not join in the Joint Motion to Dismiss on account of the Settlement Motion, jurisdiction is lacking as to all named defendants (including Kimberly Clark), since Plaintiff advanced the same deficient allegations and claims against all defendants. *See generally*, Complaint.

II. CONCLUSION

Defendants respectfully request that this Court deny the Settlement Motion, or in the alternative, delay any consideration of the Settlement Motion until after the Court rules on Defendants' Joint Motion to Dismiss.

Respectfully submitted,

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